

D/ a third layer of microfibers with a diameter of less than 10 μm , said third layer being provided directly on the full surface of the side of said first layer remote from said second film layer by a melt-blown process, said third layer three-dimensionally penetrates the surface structure of said first layer in such a way that the mean spacing D^1 between said third layer and second film layer is less than the thickness D_{sp} of said first layer sandwiched in between.

REMARKS

Claims 22-47 are pending. Claim 22 was amended and submitted with the SUPPLEMENTAL RESPONSE filed on November 18, 2002. This amendment to claim 22 was not considered in the Office Action of November 15, 2002, and instead claims 22-47 have been rejected as follows: (1) claim 38 as indefinite under 35 USC 112, second paragraph because of the word "likewise" which according to the examiner "includes elements not actually disclosed....., thereby rendering the scope of the claim unascertainable;" (2) claims 22, 26-37, 40, 41, 44 and 45 as anticipated by Tapp under 35 USC 102(b); and (3) claims 23-25, 38, 39, 46 and 47 as unpatentable under 35 USC 103(a) over Tapp in view of Braun et al.

Claim 22 as amended will be considered in this RESPONSE and the noted rejections as they apply to the noted claims in view of their dependency from claim 22 as amended are respectfully traversed.

(1)

In this rejection, the examiner cites MPEP §2173.05(d). This section of the MPEP, however, does not include in its discussion the term "likewise." The term "likewise" as used in claim 38 simply means "in the same manner," which is its dictionary definition. The meaning of claim 38 with the term "likewise" simply tells us that the composite material is

"breathable but liquid-proof" in the same manner as is the second film layer. The use of this term does not bring into play "elements not actually disclosed." There is no indefiniteness here so that this rejection should be withdrawn.

(2)

A careful study of Tapp shows that it at least lacks a teaching of the three-dimensional penetration of the third layer into the first layer such that the mean spacing D^1 between the third layer and the second layer is less than the thickness D_{sp} of the first layer. Without this structural teaching, Tapp cannot anticipate claims 22 as amended. It is fundamental law under 35 USC 102 that a single reference *must* teach each and every positively recited feature.

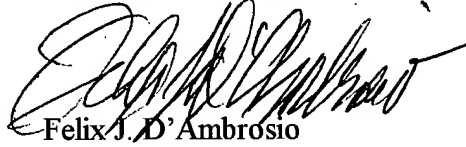
(3)

A careful reading of Braun et al shows that it too lacks a teaching of the feature noted under (2) above. If this teaching is lacking in each of the noted two patents, it is not seen how their combination can provide the teaching. Synergism cannot create a teaching, it must first exist, and it does not in the combination proposed by the examiner.

Claim 22 as amended has been presented again into this application by this RESPONSE since it was not previously considered.

In view of the foregoing, reconsideration and re-examination are respectfully requested and claims 22-47 found allowed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Felix J. D' Ambrosio', written over a horizontal line.

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MARKED-UP COPY OF AMENDED CLAIM 22

22. (Amended) A composite material for forming a liquid-retaining layer in a hygiene article or a medical product, comprising:

a first layer of substantially continuous staple fibers with a diameter of 15 to 35 μm ;

a second film layer; and

a third layer of microfibers with a diameter of less than 10 μm , said third layer being provided directly on the full surface of the side of said first layer remote from said second film layer by a melt-blown process, said third layer three- dimensionally penetrates the surface structure of said first layer in such a way that the mean spacing $[D']$ $\underline{D'}$ between said third layer and second film layer is less than the thickness D_{sp} of said first layer sandwiched in between.